

Congress of the United States

Washington, DC 20510

December 9, 2022

Warden Thahesha Jusino
Federal Correction Institute Dublin
5701 8th Street
Dublin, California 94568

Dear Warden Jusino,

As you recall, U.S. Representatives visited Federal Correctional Institute in Dublin, California (FCI Dublin) following sexual abuse against prison inmates. Our offices continue to closely follow efforts to increase accountability measures and reforms at FCI Dublin. Despite encouraging conversations with BOP officials which committed to improvements in the culture and infrastructure of this institution, numerous independent sources inform us that conditions at FCI Dublin continue to deteriorate. We write today to raise serious concerns with access to legal and healthcare services in the hopes that these issues will be met with the attention and due diligence they deserve.

Obstacles to Legal Counsel

Reports to our offices indicate that significant barriers exist for inmates seeking visits or calls from legal counsel, raising serious constitutional concerns. As you are aware, individuals in Bureau of Prison (BOP) custody retain statutory and due process rights to counsel and a First Amendment right to petition the government.¹ This right is paramount even after sentencing. In addition, BOP regulations require federal correctional institutes to provide access to any “retained, appointed, or prospective attorney of an inmate or by an attorney who wishes to interview an inmate as a witness.”² While the Warden may verify the attorney is in fact licensed, regulations prohibit limitations based on the nature of the attorney’s representation.

We received numerous reports that requested legal calls and visits were subject to unacceptable delays. On one occasion, an attorney emailed FCI Dublin staff nine times to secure a single legal call. Other reports indicated that when calls and visits were finally scheduled, they were frequently canceled last minute. Altogether, the turnaround time for one legal call or visit was often months.

We are particularly concerned that these practices, if true, would not only violate BOP regulations, but also serve as an unconstitutional denial of counsel to inmates. Given the unfortunate history at FCI Dublin, exercising the constitutional right to counsel is especially

¹ See 8 U.S.C. § 1129a(4)(B); *Biwot v. Gonzales*, 403 F.3d 1094, 1098 (9th Cir. 2005); *Colmenar v. I.N.S.*, 210 F.3d 967, 971 (9th Cir. 2000); *Mothershed v. Justices of Supreme Court*, 410 F.3d 602, 611 (2005), as amended on denial of reh’g (9th Cir. July 21, 2005); *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 545 (2001); *Valdez v. Rosenbaum*, 302 F.3d 1039, 1048 (9th Cir. 2002); *Ashker v. Schwarzenegger*, No. C 05-3286 CW, 2005 WL 2562625, at *2 (N.D. Cal. Oct. 12, 2005).

² 28 CFR § 543.13.

urgent for survivors of sexual abuse. Immediate action is needed to ensure that inmates receive timely access to legal services without unreasonable delay.

Unmonitored, Independent Reporting Line

With the history of sexual abuses at FCI Dublin, numerous reports indicate that many survivors are still not reporting instances in fear of retaliation. Retaliation includes verbal harassment and abuse by facility staff; being subjected to invasive and unwarranted strip searches; losing access to phones, computers, and commissary accounts; and being terminated from prison employment.

Under the Prison Rape Elimination Act (PREA) regulations, inmates must be able to report sexual abuse or harassment without influence from an entity with custody over them.³ These rules are created to ensure trust between internal reporting mechanisms and to protect the safety of inmates. Regrettably, reports indicate that sexual abuse claims were not only viewed by facility staff but led to unacceptable retaliation.⁴ Survivors must be able to report abuse to advocates without undue influence and free from interception from FCI Dublin staff. This includes unmonitored, community-based reporting channels for the registering of complaints.

Adequate Health Services

Our offices are also aware of serious gaps in healthcare services provided to survivors of sexual abuse at FCI Dublin, including unacceptable delays in receiving medical care and psychological treatment to address enduring traumas. Of those who do receive healthcare services, it is often seriously lacking and inadequate, leading many to forego seeking treatment entirely.

Under PREA, there are detailed requirements for the prevention, detection, and investigation of sexual abuse at federal prisons.⁵ This includes offering medical treatment and mental health evaluations to all incarcerated survivors of sexual abuse.⁶ These services must be consistent with the community level of care, including access to outside “victim advocates” for emotional support services related to sexual abuse.⁷

It is our understanding that there is currently no access to outside confidential mental health services at FCI Dublin. Tri-Valley Haven, a local rape crisis center, previously contracted with FCI Dublin to provide legally mandated health care services to inmates. However, Tri-Valley Haven allegedly declined to renew its contract due to extreme difficulties in accessing clients under prior administrations at FCI Dublin. FCI Dublin must comply with PREA requirements to immediately provide essential health care services for survivors of abuse.

Conclusion

³ See 28 C.F.R. § 115.51(b), 151(b), 251(b), 351(b)

⁴ See, e.g., Woman who reported Dublin prison sexual abuse claims she was target of retaliation, Fox KTVU, Jun. 10, 2022, *available at*, <https://www.ktvu.com/news/woman-says-she-was-retaliated-against-for-reporting-sexual-abuse-at-dublin-prison>

⁵ 34 U.S.C. § 30301 et. al

⁶ 28 C.F.R. § 115.83

⁷ *Id.*

Prior administrations at FCI Dublin failed to provide legally mandated protections to inmates at this federal correctional institute and we have been led to believe that your administration will be substantially different. We ask that you demonstrate this by taking immediate steps to remedy the issues raised here. To that end, we request that you provide answers to the below questions on or before January 30, 2023.

1. Please confirm that FCI Dublin is fully complying with constitutional obligations to allow inmates reasonable access to counsel in accordance with law.
2. Does FCI Dublin currently meet the expectations of its policies and procedures for responding to and scheduling attorney legal visits and phone calls.
3. In providing reasonable access to counsel:
 - a. How many FCI Dublin staff are responsible for intake of attorney legal visits or calls requested at FCI Dublin?
 - b. Please describe the FCI Dublin intake process, in detail, once a request is made for an attorney legal visit by an inmate, attorney of record, or legal service representative.
 - c. What is the average turnaround time between an initial request for a legal call and the call taking place? What is the average for a legal visit?
4. Please confirm that FCI Dublin is fully complying with PREA in accordance with the law.
 - a. How is FCI Dublin ensuring compliance with PREA?
 - b. Which provider is FCI Dublin contracting with to provide community-based care to inmates? If none, what is the timeline for contracting with a PREA-approved health care provider?
 - c. How is FCI Dublin working with outside advocates to create an unmonitored system for PREA reports?
 - d. Does FCI Dublin provide private spaces for legal visits and phone calls, outside the presence of facility staff?
 - e. When providing assistance to inmates seeking to file a PREA complaint, does FCI Dublin staff review complaints before they are filed? If yes, who reviews the complaints and why?

Please provide all answers to Brian McMillan, brian.mcmillan@mail.house.gov. Thank you for your consideration of this matter.

Sincerely,



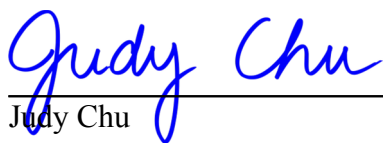
Eric Swalwell
Member of Congress



Karen Bass
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